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In the High Court of Judicature at Madras

Dated: 11 - 12 - 2007

Coram:

The Honourable Mr.Justice S.J.Mukhopadhaya
and
The Honourable Mr.Justice M.Venugopal

O.S.A.Nos.67 and 68 of 2001 and 132 to 136 of 2003
and W.A.Nos.2002 and 2005 of 2003

1. Bharat Pertoleum Corporation Ltd.,
Rep. by its Territory Manager,
35, Vaidyanatha Mudali Street,
Tondiarpet, Madras-600 081.

2. Bharat Petroleum Corporation Ltd.,
Rep. by its Chief Divisional Manager,
1, Ranganathan Garden,
Anna Nagar, Madras-600 040.

. Appellants in O.S.A.No.67 of 2001 and 68/2001, Respondents in OSA No.132 to 136/2003, Appellants in WA No.2002/2003, Respondents in WA No.2005/2003

vs.

Sree Venkateswara Service Station,
A regd. Firm, rep. by its Managing Partner,
Sri K.G.Loganathan,
265/1, CP Manali Express Highway,
Sathanagadu, Manali, Madras-600 068

.. Respondent in O.S.A.No.67 of 2001 and 68/01, Appellant in OSA No.132 to 136/2003, Respondent in WA No.2002/2003,Appellant in WA No.2005/03

Original Side Appeal No.67 of 2001 and 68/2001 filed against the order dated 15.12.2000, passed in Original Application No.1083 of 2000 and 1081/2000 in Civil Suit No.880 of 2000 and 881 of 2000 on the file of the Original Side of this Court.

OSA No.132 to 136 of 2003 : Original Side Appeal No.132 to 136 of 2003 filed against the order dt.28.3.2003,passed in Original Application No.701/02,702/02,4205/02,4206/02,4720/02 in Civil Suit

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No.703/2002, on the file of Original Side of this Court.

WA No.2002 of 2003 and WA No.2005 of 2003 : WA filed against the order of this Court dt. 6.5.2003 and made in WP 13754/03 Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records of the respondents viz. the order of termination of dealer ship dt. 29.3.2003 issued vide.Ref.M.41-07 issued by the 1st respondent and quash the same and direct resumption of sales and supplies of the petroleum products to the petitioner's outlet at No.403/B Tiruvotriyur High Road, Chennai 600 019 in accordance with law dealer ship agreement dt. 9.4.1981 and 5.7.1984.

For appellants in O.S.A.No.67 of 2001
and 68 & WA 2002/03 & Respondent in
OSA 132 to 136/2003 and WA 2005/03: Mr.O.R.Santhanakrishnan

For respondent in O.S.A.No.67 of 2001
and 68 of 2001 & WA 2002/03 and for
Appellant in OSA 132 to 136/03
and WA 2005/03 : Mr.R.Thiagarajan

Common Judgment

S.J.Mukhopadhaya,J

In all these appeals, as there are common parties and almost similar questions are involved, they were heard together and disposed of by this common judgment.

2. Sree Venkateswara Service Station (hereinafter referred to as 'the dealer') entered into an agreement for dealership with Bharat Petroleum Corporation Limited (hereinafter referred to as 'the Petroleum Corporation') for two retail outlets, one at Thiruvottiyur, Chennai and the other at Sathangadu, Manali, Chennai. Having served with show cause notice and order of suspension, the dealer preferred three suits in C.S.Nos.880 and 881 of 2000 and 703 of 2002.

3. Original Applications in O.A.Nos.1080 and 1081 of 2000 in C.S.No.881 of 2000 and Original Applications in O.A.Nos.1082 and 1083 of 2000 in C.S.No.880 of 2000 were filed by the dealer, for grant of interim injunction. Separate applications were also preferred by the dealer in O.A.Nos.701 and 702 of 2002 and Application Nos.4205, 4206 and 4720 of 2002, in C.S.No.703 of 2002, for certain other reliefs, such as conducting test and for submitting report and to allow the plaintiff (dealer) to effect sale of petroleum products etc.

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4. Learned single Judge, by the common impugned order dated 15.12.2000 in O.A.Nos.1080 to 1083 of 2000, passed the interim order with the following conditions:

> "23. For the reasons stated above, the defendants are directed to supply petroleum products to the plaintiff in both cases subject to the following conditions:
>
> (i) The plaintiffs are directed to remove the petroleum products stored in the underground tanks and make them suitable for receiving the new petroleum products from the defendants.
>
> (ii) The plaintiffs are directed to make the necessary payments before getting supply of the petroleum products.
>
> (iii) The plaintiffs should file an affidavit of undertaking before this Court that they would sell the petroleum products in the condition in which it was received by them and they would not indulge in any other illegal acts.
>
> (iv) The defendants are restrained from cancelling the dealership of the plaintiffs till the disposal of the suit, but, however, this will not be a bar if and when the plaintiff in future violates the terms and conditions of the agreement.
>
> These applications are ordered accordingly."

5. The aforesaid common order dated 15.12.2000 is under challenge in O.S.A.No.Nos.67 and 68 of 2001 preferred by the Petroleum Corporation.

6. So far as the other applications in O.A.Nos.701 and 702 of 2002 and Application Nos.4205, 4206 and 4720 of 2002, are concerned, the learned single Judge rejected the same by common order dated 28.3.2003, against which, the dealer has preferred O.S.A.No.132 to 136 of 2003.

7. During the pendency of the above said three suits, the Petroleum Corporation, vide order dated 29.3.2003, terminated the aforesaid dealership so far as the petroleum outlet at No.403, Thiruvottiyur High Road, Thiruvottiyur, Chennai-19, is concerned, and the said order dated 29.3.2003 was challenged by the dealer in Writ Petition—W.P.No.13754 of 2003. On receipt of notice in the said Writ Petition, the Petroleum Corporation appeared and brought to the notice of the learned single Judge that only after giving notice to the dealer and taking into consideration the show cause reply submitted by it, the dealership has been terminated in terms of the

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agreement. The learned single Judge, by order dated 6.5.2003, though noticed that different applications were made in the show cause notice by the Petroleum Corporation against the dealership, set aside the order of termination of dealership dated 29.3.2003 on the ground that no reasons have been given in the order of termination of dealership and remitted the matter, providing stop-gap arrangement. Liberty was given to the Petroleum Corporation to enquire into the matter and pass fresh order, but it was observed that in the meanwhile, the Petroleum Corporation can carry on business by themselves without giving it to any other person or dealer, pending final orders to be passed by the Petroleum Corporation. The order dated 6.5.2003 passed by the learned single Judge has been challenged both by the Petroleum Corporation in Writ Appeal No.2002 of 2003 and by the dealer in Writ Appeal No.2005 of 2003.

8. When the above appeals were taken up by this Court for hearing, prima-facie it appeared that most of the O.S.As. have become infructuous and we have heard the Writ Appeals in detail, apart from the arguments advanced in respect of the interim orders.

9. So far as the Petroleum outlet at Sathangadu, Manali, Chennai is concerned, learned counsel for the Petroleum Corporation submitted that ad-hoc dealership agreement was made, which has come to an end by efflux of time, in view of such agreement. This was not disputed by the learned counsel for the dealer.

10. In view of the fact that the dealership agreement has now come to an end by efflux of time and the agreement is no more in force, we are not deliberating on the issue raised in O.S.A.No.67 of 2001, which became infructuous.

11. The first three conditions stipulated by the learned single Judge in the interim order dated 15.12.2000 are applicable only to the plaintiff (dealer) and the fourth condition that has been stipulated to the defendant (Petroleum Corporation) is not required to be implemented, as the dealership has come to an end, in the absence of any extension of agreement.

12. So far as the Writ Appeals are concerned, the following facts emerge from the pleadings made by the parties.

13. In respect of Petroleum outlet at Thiruvottiyur High Road, Thiruvottiyur, Chennai, is concerned, the dealership was suspended on 4.11.2000 on certain irregularities alleged to have been committed by the dealer. A notice was issued by the Petroleum Corporation on 15.11.2000 asking the dealer to show cause as to why his dealership agreement be not terminated. The dealer filed suits in C.S.No.880 and 881 of 2000 and obtained interim order dated

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15.12.2000 in O.A.Nos.1080 to 1083 of 2000. Against the said order dated 15.12.2000, O.S.A.Nos.67 and 68 of 2001 have been preferred.

14. Subsequently, during inspection of the said retail outlet on 15.11.2001, certain irregularities have been noticed and an explanation was sought for by the Petroleum Corporation by letter dated 19.11.2001. The dealer submitted reply, vide its letter dated 26.11.2001. Subsequently, on 12.9.2002, a surprise check was made by Civil Supplies CID of the State Government and the Proprietor's son was caught red-handed, while unloading white kerosene into the underground tank and so, the son of the dealer was arrested and lorry was seized. On that basis, the order was passed by the Petroleum Corporation on 12.9.2002 to stop the sales, followed by a show cause notice issued on 26.9.2002 calling upon the dealer to give reply as to why his dealership agreement be not terminated. This time, the dealer submitted reply on 5.10.2002. But being not satisfied, the impugned order of termination of dealership agreement was issued, vide letter dated 29.3.2003.

15. The learned single Judge, though noticed the aforesaid facts, allowed the Writ Petition and set aside the order of termination of dealership, dated 29.3.2003 with the following observations:

> "14. ... Though explanation is called for by issuing the show cause notice, from the petitioner and explanation was offered by the petitioner denying the allegations, the respondents have not given any reason for not accepting the explanation offered by the petitioner. In this case, the first respondent has stated as follows:-
>
> "We had vide our letter dated 26.09.2002 sought your explanation for the above facts. Your reply dated 05.10.2002 is not satisfactory".
>
> Except the above passage, the other portion of the impugned order is nothing but reproduction of the show cause notice. The above said facts clearly show the non-application of mind of the first respondent. Calling for explanation is not an empty formality and so the respondents should have dealt with the said explanation while passing the impugned order. There is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reason is an indispensable part of a sound system of judicial review. Even an administrative decision is subject to judicial review

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if it affects the right of citizens, and it is therefore desirable that reasons should be stated. In the present case, the same has not been done, and mere reproduction of the reasons mentioned in the show cause notice in the impugned order cannot cure the defects as the 1st respondent has not taken any decision and passed orders giving reasons on the basis of the reply given by the petitioner."

16. While learned counsel for the Petroleum Corporation referred to the impugned order of termination of dealership dated 29.3.2003 and submitted that sufficient reason was shown for termination of dealership, the learned counsel appearing on behalf of the dealer referred to the said order of termination and submitted that no ground has been given to show why they were not satisfied with the reply. He also placed reliance on the show cause reply submitted by the dealer. Both the counsel also highlighted the relevant facts in support of their respective claim and counter claim to find out that the irregularities were actually committed or not, but we are not inclined to deliberate on those factual aspects in the absence of specific evidence which can be looked into by the Court of competent jurisdiction.

17. So far as the Writ Appeals are concerned, we are supposed to look into the question of legality or propriety of the order and at best, can look into the question whether the principles or rules of natural justice were violated by the Petroleum Corporation in letter and spirit while terminating the dealership.

18. From the show cause notice, it would be evident that the Petroleum Corporation alleged malpractice against the dealer. Show cause notices were issued on 15.11.2000, which is the subject matter in the suit C.S.No.881 of 2000. Subsequently, during the pendency of the suit, inspection of retail outlet was made by the officers of the Petroleum Corporation on 15.11.2001 and following irregularities were found:

i. RO kept dry of products/low stocks.
ii. Variation beyond permissible limits on HSD.

19. The reply to the explanation was found to be totally unsatisfactory. Subsequently, on 12.9.2002, a surprise check was made by the Civil Supplies CID of the State and the son of the dealer was caught red-handed while unloading white kerosene into the underground tank for which he was arrested and lorry was seized. On the said date, i.e. 12.9.2002, HSD samples were taken from the outlet, but they failed to meet the requirements of "ultra high speed diesel" with respect to density, viscosity and sulphur.

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Earlier, in many number of occasions, it was found that cheques were given by the dealer, but they were returned by the bankers and number of times the cheques also bounced.

20. It is in the abovesaid background, subsequently, a show cause notice was issued on 26.9.2002 and the dealer was asked to show cause as to why his dealership agreement be not terminated. Having found the reply dated 5.10.2002 unsatisfactory, the order of termination of dealership agreement was issued.

21. From the show cause reply submitted by the dealer, dated 5.10.2002, we find that no specific reply had been given with regard to seizure of white kerosene tanker from the said outlet. On the other hand, such a fact has been admitted, but its reply that the matter is subjudice before the Magistrate.

22. We have noticed that what is subjudice is the imputation as alleged against the son of the dealer, but the fact relating to mixing of white kerosene with the petroleum products, has not been disputed. Nowhere, it is disputed that the cheques issued by the dealer were returned by the banker for about two or three occasions, and even the cheques bounced.

23. Thus, action of the dealer was against Clause 10(g) and 11 (b) of the DPSL Agreement, dated 5.7.1984 as alleged by the Petroleum Corporation. This fact has been noticed by the Petroleum Corporation in the impugned order of termination of dealership, dated 29.3.2003. The relevant portion is extracted hereunder:

> "From the above it is clear that:
> a. MS sample taken from your outlet on 31.10.2000 failed to meet its specifications with respect to RON.
>
> b. HSD sample taken from your outlet on 31.10.2000 failed to meet its specifications with respect to viscosity.
>
> c. HSD sample taken from your outlet on 12.09.2002 failed to meet the requirements of Ultra High Speed Diesel with respect to density, viscosity and sulphur.
>
> Thus you have violated clause 10(g) of the DPSL agreement dated 05.07.1984.
>
> d. As many as five occasions, the cheques given by you were returned by your bankers for various reasons.

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This is clear violation of Clause 11(b) of DPSL agreement dated 05.07.1984.

e. During the joint inspection carried out at your retail outlet on 31.10.2000, it was found that 1. BPCL's seals on the totaliser were tampered and 2. Weights and Measures seals on totaliser in 'Z' line pump was missing.

This is violation of Clause 9 of DPSL agreement dated 05.07.1984.

We had vide our letter dated 26.09.2002 sought your explanation for the above facts. Your reply dated 05.10.2002 is not satisfactory.

Please refer to the various applications and Civil Court suit filed in the Madras High Court on the subject matter viz. O.A.No.701 & 702 of 2002. Application No.4205, 4206 & 4720 of 2002 in CS.703 of 2002 have been dismissed by the Lordship Justice A.Ramamurthy of Madras High Court on 28.03.2003.

In view of the above, you have contravened the terms of the agreement entered with us on several occasions particularly adulteration of MS once and HSD twice.

On close scrutiny of the history of your dealership, we regret to inform you that we are unable to continue with your Dealership any longer.

We hereby terminate aforesaid Dealership Agreement dated 05.07.1984 forthwith."

24. From the aforesaid quotation, it would be evident that the Petroleum Corporation has not only applied their mind, but have shown detailed grounds for termination of dealership agreement in the impugned order dated 29.3.2003 itself.

25. In the case of Indian Oil Corporation Limited and another vs. M/s.Kamala Filling Station (unreported) vide judgment dated 26.3.2007 in Writ Appeal No.2868 of 2003, a Division Bench of this Court, while noticing similar submission that the detailed grounds had not been given in the order impugned, made the following observations:

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15. Now, let us consider whether the order of termination contains any acceptable reason, to be interfered with on the ground of "bereft of details". Before considering the said issue, it is to be noted that the authority like, Indian Oil Corporation cannot be equated with a judicial forum requiring to deal with all the pleadings of the parties, contentions/arguments and to give reasons for each and every issue. In the case on hand, admittedly, the petitioner was given an opportunity by issuing show-cause notice and in fact, pursuant to the same, the petitioner submitted a reply on 4.6.2002. In the first paragraph of the termination order, the Chief Divisional Manager, Indian Oil Corporation referred to the show-cause notice dated 21.5.2002 and reply of the petitioner dated 4.6.2002 and after carefully considering the contentions found in the reply, arrived at a conclusion that the explanation is not satisfactory. Though the Officer has not adverted to those details mentioned in the show-cause notice and the reply, it cannot be construed that the authority has not considered all the details/information furnished or adverted to. It is relevant to mention that the authority has also referred all the irregularities committed by the dealer on three earlier occasions. Those details show the date and different nature of irregularities as well as the action taken by IOC. It is not in dispute that in all three occasions, the dealer has not challenged the action taken/punishment imposed on him. "

26. It was also observed in the above said unreported judgment dated 26.3.2007 in Writ Appeal No.2868 of 2003, that the Indian Oil Corporation being a Corporate Sector cannot permit anyone to bring disrepute to the name and goodwill of the Corporation and affect the interests of the general public and the Corporation cannot be a silent spectator and on the other hand, it is the duty of the Corporation to correct the situation and dealer in order to serve the general public, which is expected of by them.

27. We are unable to agree with the finding of the learned single Judge in W.P.No.13754 of 2003, dated 6.5.2003, that the termination of dealership agreement was passed without giving sufficient grounds. On the other hand, we find and hold that the order of termination was issued after giving adequate opportunity of

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hearing the dealer and after considering the merits of the reply, as there is application of mind, having shown sufficient grounds for the same. We accordingly set aside the order dated 6.5.2003 passed by the learned single Judge in W.P.No.13754 of 2003.

28. In view of the fact that the dealership of the dealer now has been terminated, vide order dated 29.3.2003, as upheld by us, we are of the opinion that all interim orders passed by the trial Court and challenged in O.S.A.Nos.67 and 68 of 2001 and O.S.A.Nos.132 to 136 of 2003, now cannot be given effect to. Thus, those appeals have become infructuous.

29. We accordingly allow Writ Appeal No.2002 of 2003 preferred by the Petroleum Corporation and dismiss the Writ Petition in W.P.No.13754 of 2003, preferred by the dealer, so also Writ Appeal No.2005 of 2003.

30. So far as O.S.A.Nos.67 and 68 of 2001 and 132 to 136 of 2003 are concerned, all of them having become infructuous, are also accordingly dismissed.

31. In view of our aforesaid observations and developments as noticed and referred to above, whether the suits in C.S.Nos.880 and 881 of 2000 and 703 of 2002 have become infructuous or not, is an issue to be determined by the trial Court. We leave it open for the parties to raise such question.

32. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Sub Asst. Registrar,
Original Side, High Court, Madras.

2. Territory Manager,
Bharat Pertoleum Corporation Ltd.,
35, Vaidyanatha Mudali Street,
Tondiarpet, Madras-600 081.

3. Chief Divisional Manager,
Bharat Petroleum Corporation Ltd.,
1, Ranganathan Garden,
Anna Nagar, Madras-600 040.

+1cc to Mr.O.R.Santhanakrishnan, Advocate Sr 72941

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km/20.12.

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and
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